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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,105	08/18/2003	Mark A. Criss	TELN . P0113USE	3350
43076	7590	08/26/2004	EXAMINER	
MARK D. SARALINO (GENERAL) RENNER, OTTO, BOISELLE & SKLAR, LLP 1621 EUCLID AVENUE, NINETEENTH FLOOR CLEVELAND, OH 44115-2191			APPIAH, CHARLES NANA	
			ART UNIT	PAPER NUMBER
			2686	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,105	Applicant(s) CRISS ET AL.	
	Examiner Charles Appiah	Art Unit 2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/24/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No.

5,848,064. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims of the instant application are broad enough to be encompassed by the limitations of the claims of Patent and as such it would have been obvious to one of ordinary skill in the art to implement the claims of the instant application using the claims of the Patent in order to provide updated software for the proper operation of a desired communication device.

2. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No.

6,031,830. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are broad enough to be encompassed by the claims of the Patent and as such it would have been obvious to one of ordinary skill in the art to implement the claims of the instant application using the claims of the Patent in order to provide updated software for the proper operation of a desired communication device.

3. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No.

6,308,061. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are broad enough

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to be encompassed by the claims of the Patent and as such it would have been obvious to one of ordinary skill in the art to implement the claims of the instant application using the claims of the Patent in order to provide updated software for the proper operation of a desired communication device.

4. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,643,506. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of the claims of the instant application are broad enough to be encompassed by the claims of the Patent and as such it would have been obvious to one of ordinary skill in the art to implement the claims of the instant application using the claims of the Patent in order to provide updated software for the proper operation of a desired communication device.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by **Rhodes et al. (5,909,437)**.

Regarding claim 1, Rhodes discloses a method of operation in a wireless communication system comprising a system backbone (PSTN), a host computer coupled to the system backbone (inherent feature of PSTN), at least one base station (10) coupled to the system backbone, the at least one base station including a base station transceiver for communicating wirelessly with mobile devices (20) within the system, and at least one mobile device having a mobile device transceiver for communicating wirelessly with the host computer on the system backbone via the at least one base station, comprising the steps of: storing a version of operating software that provides instruction code in the at least one mobile device, the operating software, when executed, allowing the at least one mobile device to carry out its intended function (see col. 16, line 45 to col. 17, line 34), determining whether the version of the operating software stored in the at least one mobile device is a current version of the operating software (see col. 19, line 60 to col. 20, line 4) and wireless updating the operating software stored in the at least one mobile device if it is determined that the operating software stored in the at least one mobile device is not the current version (see col. 20, lines 5-27).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 5, 6-8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trompower et al. (6,128,483) in view of Park (5,909,581).

Regarding claims 1 and 13, Trompower discloses (see Fig. 3), a method of operation in a wireless communication system comprising a system backbone (152), a host computer (158), coupled to the system backbone, at least one base station (154, 156), coupled to the system backbone, the at least one base station including a base station transceiver (160), communicating wirelessly with mobile devices (166), within the system, and at least one mobile device having a mobile device transceiver for communicating wirelessly with the host computer on the system backbone via the at least one base station (see col. 5, lines 46-63). Trompower further discloses the capability of the system to wirelessly update or transfer data to portable devices (see col. 25, lines 26-39), but fails to specifically teach determining whether a version of operating software that provides instruction code in the at least one mobile device, the operating software, when executed allowing the at least one mobile device to carry out its intended function, stored in the mobile device is the current of version and wirelessly updating the operating software in the at least one mobile device if it is determined that the operating stored in the at least one mobile device is not the current version.

In an analogous field of endeavor, Park discloses an automatic software updating method which include a server using FTP protocol and in which new software is only downloaded when required through a comparison of version codes of

downloaded version-up table and previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with the Trompower's system in order to ensure efficient use of communication resources by providing updates only when desired or needed.

Regarding claim 5, Trompower further discloses the step of at least one mobile device downloading the current version of the operating software (see col. 25, line 26 to col. 26, line 35) but fail to specifically disclose an FTP server coupled to the system backbone from which the current version of the operating software is downloaded.

Park discloses an automatic software updating method which includes a server using FTP protocol in which new software is only downloaded when required through a comparison of version codes of downloaded version-up table and a previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with Trompower's system in order to ensure efficient use of communication resources by providing updates only when desired or needed

Regarding claim 6, Trompower discloses a wireless communication system (see Fig. 3), comprising a system backbone (152), a host computer (158) coupled to the system backbone, at least one base station (154, 156) coupled to the system backbone, the at least one base station including a base station transceiver (160), communicating wirelessly with mobile devices (166), within the system, and at least one mobile device having a mobile device transceiver for communicating wirelessly with the host computer

on the system backbone via the at least one base station (see col. 5, lines 46-63).

Trompower further discloses the capability of the system to wirelessly update or transfer data to portable communication devices (see col. 25, lines 26-39), but fails to explicitly teach the use of FTP server coupled to the system backbone in the communication system as well as the host computer requesting from the mobile device indicia indicative of a version of mobile operating software that provides instruction code is stored in the at least one mobile device and when executed, allows the at least one mobile device to carry out its intended function and wherein the host computer and the at least one mobile device are operatively are configured to determine whether to selectively update mobile device operating software there between based on an initial comparison in accordance with a predetermined criteria indicative of whether updating of the mobile device operating software is appropriate and the FTP server and the at least one mobile device are operatively configured to communicate selectively the mobile device operating software determined to be appropriate for updating.

In an analogous field of endeavor, Park discloses an automatic software updating method which include a server using FTP protocol and in which new software is only downloaded when required through a comparison of version codes of downloaded version-up table and previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with the Trompower's system in order to ensure efficient use of communication resources by providing updates only when desired or needed.

Regarding claim 7, the combination of Trompower and Park shows wherein the initial comparison includes a comparison of an indicia of a version of mobile device operating software stored in the host computer and an indicia of a version of mobile device operating software presently stored in the mobile device (see Park, col. 3, lines 25-58).

Regarding claim 8, Trompower as modified by Park inherently disclose that the initial comparison is carried out by the host computer based on indicia information provided by the mobile device as taught by Park since downloading and installation of the new software from the Bps to the PCS are only carried out when the version code of downloaded version-up table is the same as preset code value (step 370 to 380, FIG. 3).

Regarding claim 10, the combination of Trompower and Park further discloses as taught by Park that in the event the version of mobile device operating software stored in the mobile device is different from the version of mobile device operating software stored in the host computer, the host computer request the mobile device to download updated operating software from the FTP server (see col. 1, lines 42-64, col. 4, lines 15-25).

Regarding claim 11, the combination of Trompower and Park further teaches wherein the mobile device replaces the mobile device operating software presently stored therein with the mobile device operating software provided from the FTP server (see col. 3, lines 25-58).

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9. Claims 2, 3, 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trompower et al and Park as applied to claim 1 above, and further in view of Halliwell et al. (5,473,772).

Regarding claims 2, 4 and 9, Trompower as modified by Park fail to disclose the steps of the host computer requesting from the at least one mobile device indicia indicative of a version of mobile device operating software stored in the at least one mobile device, the at least one mobile device transmitting the indicia indicative of version of mobile device operating software stored in the at least one mobile device, the host computer receiving the indicia indicative of the version of mobile device operating software stored in the at least one mobile device and the host computer determining whether updating of the mobile device operating software is appropriate based on an initial comparison in which the indicia indicative of the mobile operating software stored in the at least one mobile device is compared to an indicia of the current version of mobile device operating software, wherein the indicia information provided by the mobile device is provided in response to a request by the host computer for such indicia information.

Halliwell discloses a data processing network having a first processor and a second processor linked by a communication system as illustrated in Fig. 1 (see col. 1, line 65 to col. 2, line 12), whereby the most up-to-date version(s) of a file or files available at the first processor are downloaded from the second processor when it is determined that the appropriate files are not available at the first processor (see col. 2,

lines 54-62) wherein the comparison is carried out either at the first processor or second processor (col. 5, lines 2-40).

It would therefore have been obvious to one of ordinary skill in the art to incorporate the automatic update system of Halliwell into the system of Trompower and Park in order provide an updating facility as part of a shared control logic in order to augment and/or replace existing files when required as taught by Halliwell.

Regarding claim 3, the combination of Trompower, Park and Halliwell teaches as inherently taught by Park, the step of the host computer requesting from the at least one mobile device indicia indicative of a version of mobile device operating software occurs following completion of a boot-up routine during which the at least one mobile device establishes an identity in the wireless communication system with the automatic connection between the Bps and the host after initialization with the loading of the version-up table and the subsequent comparison of version codes for determination whether to download a software (see col. 3, lines 51-58).

Allowable Subject Matter

10. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 12, prior art of record fails to teach alone or in combination a WAN based system backbone having a plurality of wireless communication systems coupled thereto; a WAN based host computer coupled to the respective host computers in the plurality of wireless communication systems via the WAN based system backbone and a WAN based FTP server coupled to the respective FTP servers in the plurality of wireless communication systems via the WAN based system backbone, wherein the WAN based FTP server is operatively configured to communicate updated mobile device operating software to the respective FTP servers via the WAN based system backbone and the WAN based host computer is operatively configured to communicate updated information related to the mobile device operating software to the respective host computers via the WAN based system backbone in combination with all the recited limitations of claim 12.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lysik et al. (6,113,652) discloses a system for conducting a non-disruptive upgrade of communications network equipment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 703 305-4772. The examiner can normally be reached on M-F 7:30AM-5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703 305-4379. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CA
August 19, 2004


CHARLES APPIAH
PRIMARY EXAMINER